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Chron

2-20-86

Memo from re. allocation of affordable housing ~~as a [illegible]~~ measured by region, also incorporates AMG analysis & application.

pgs. 28

Note: Expert

* A very good memo.

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REPLY TO:
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February 20, 1986

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JUDGE SERPENTELLI'S CHAMBERS

Arthur Kondrup, Chairman
Council on Affordable Housing
3625 Quakerbridge Road
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Dear Chairman Kondrup:

In response to the Council's invitation for public input, please accept the following commentary on behalf of New Brunswick Hamption, Inc. and Rakeco Developers, Inc. These comments are intended to clarify the oral testimony presented by Jeffrey R. Surenian, Esq. on Thursday March 13, 1986 at the Freeholder's Meeting Room in Morristown, New Jersey. To the extent there are any inconsistencies between the oral testimony and this written presentation, it is intended that this written presentation represent the position of New Brunswick Hampton, Inc. and Rakeco Developers, Inc.

The Council will inevitably face two fundamental questions in each Mount Laurel matter it faces:

(1) What is the best method for accurately identifying the lower income housing need and for fairly distributing that need?

(2) How can the obligation imposed on any municipality be satisfied so as to maximize the potential for the actual construction of lower income housing and to minimize the negative externalities that typically accompany Mount Laurel compliance?

I. IDENTIFYING THE OBLIGATION: THE NUMBERS GAME

A. The Magnitude Of The Need Statewide

It cannot be adequately emphasized that the magnitude of the need for lower income housing statewide is substantial.

In J.W. Field Company, Inc. v. Township of Franklin, 206 N.J. Super. 165 (Law Div. October 7, 1985), [hereinafter "J.W. Field II"], the court undertook a comparative analysis of the statewide present need using a variety of proposed methods. The comparison is summarized in the following chart:

Method For Calculating Present Need	Statewide Need
1. AMG Approach To Substandardness/ CUPR Approach To Identifying Number Of Substandard Units Occupied By Lower Income Households	112,440 units
2. CUPR Approach to Substandardness And To The Lower Income Count	120,120 units*

* This figure verifies the figure specified in Countryside Properties v. Bor. of Ringwood, 205 N.J. Super. 299 (Law Div. 1984), for the number of substandard units occupied by lower income households statewide as calculated exclusively with the CUPR method.

3. Countryside Properties Approach To Substandardness And To Lower Income Count — 147,560 units

That each of these estimates reflects conservative figures is vividly revealed by the fact that those units occupied by lower income households paying a disproportionate share of their income on housing have been excluded.*

Dr. Burchell has estimated that (1) 76,040 lower income households own single family structures in which the monthly ownership costs exceed 28%; and (2) 268,560 lower income households spend more than 30% of their income for rental housing costs. Thus, the total need for lower income housing based exclusively on those paying a disportionate share of their income on housing is 344,600 units (76,040 + 268,560). Dr. Burchell's figures do not reflect whether any overlap exists between (1) substandard units occupied by lower income households and (2) units occupied by lower income households paying a disproportionate share of their income on housing. However, even if every lower income household paying a disproportionate share of their income on housing resided in substandard units (a total overlap - hardly a likely possibility), the

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* Mount Laurel II leaves no question that the present need consists of at least those lower income households residing in "dilapidated or overcrowded" units. Id. at 243.

present need would still be no less than 197,040 units, even using the Countryside Properties approach to calculating the maximum lower income housing need generated by substandard units.

Very strong arguments exist to support the proposition that the Mount Laurel doctrine should address the needs of lower income households paying a disproportionate share of their income on housing, as well as the needs of lower income households residing in substandard units. From a common sense perspective, a poor family living in a unit it cannot afford needs affordable housing just as desperately as a poor family living in a substandard unit needs standard housing.* The Council is thus urged not to succumb to the argument that the present need estimates provided by the Courts are artificially inflated.

The AMG opinion also calculated that the figure of 158,708 units accurately reflects the prospective need to the year 1990. AMG at 44-45; 117. The methodology developed by the Center for Urban Policy and Research calculated prospective

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* Even Mount Laurel Township addressed the needs of lower income households paying a disproportionate share of their income on housing. Mount Laurel II at 299-300.

need statewide to be 133,981 units. Center for Urban Policy Research, Response To The Warren Report: Reshaping Mount Laurel Implementation at 44 (1984).

The above analysis clearly reveals that the present and prospective need for lower income housing is -- at a minimum -- 246,521 units* (112,440 representing the minimal present need estimate + 133,981 representing the minimal prospective need estimate).

Despite the clear need for at least 246,521 units, several theories have been offered to reduce these conservative estimates. First, the "filter down" theory has been proposed as a means of reducing the estimates of the need. Second, a concept of "1985 Present Need" has been offered as a basis to reduce the numbers. Finally, the impossibility of fully satisfying the entire statewide need has become the basis for arguing that the need should be reduced to numbers that are attainable.

1. The Filter Down Theory

Mount Laurel II squarely addressed the filter down theory. Mount Laurel II at 278. Specifically, the Court stated

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* This number does not include to any degree the need generated by lower income households paying a disproportionate share of their income on housing.

> ...the problem with this theory is that the housing that has been built and is now being built in suburbs such as Mount Laurel is rapidly appreciating in value so that none of it will "filter down" to poor people. Instead, if the only housing constructed in municipalities like Mount Laurel continues to be middle and upper income, the only "filter down" effect that will occur will be that housing on the fringes of our inner cities will "filter down" to the poor as more of the middle class leave for the suburbs, thereby exacerbating the economic segregation of our cities and suburbs.

Id. In light of this statement, any significant reduction in the statewide estimates of the need because of the potential for a "filtering down" of units would seem to invite judicial intervention. Unless new information previously unavailable to the Court is now available which demonstrates that the filter down theory can significantly reduce the need, the Council should be wary of relying too heavily on the superficial appeal of the trickle down theory.

2. 1985 Present Need

The Issue Papers do not specify precisely how this "concept" works. Presumably the present need would be redefined by adjusting the need estimated to exist in 1980 by (1) subtracting out the number of substandard units that were rehabilitated between 1980 and 1985 and (2) adding in the number of standard units that deteriorated into a substandard con-

dition between 1980 and 1985. The prospective need would be calculated by projecting the increase in need for lower income housing between 1985 and 1991.

Were it possible to accurately identify the present need that existed in 1985 and were it possible to accurately predict the prospective need that would arise between 1985 and 1991, a relatively sound basis for determining the subject municipality's obligation would exist. Because the fair share methodologies currently utilized by the courts depend upon the 1980 Census, the number of lower income households is projected on the basis of that data. Thus, when computing the present need of a municipality sued in 1989, the courts would ignore the increase or decrease in substandard housing between 1980 and 1989. Similarly, when computing the municipality's prospective need, the courts would ignore any projected increase in the number of lower income households between 1990 and 1995.

While the concepts such as 1985 Present Need would minimize the anomaly by defining the present and prospective need in terms of the year 1985 rather than 1980, the Council is cautioned against incorporating this concept into any methodology it might develop unless and until it is fully satisfied that the data is accurate. Because the accuracy of the data

is so important to the legitimacy of the concept of 1985 Present Need, it would be deeply appreciated if an opportunity would be afforded to examine any information submitted to the Council regarding 1985 Present Need and to possibly offer further comments regarding the reliability of the information.

3. The Impossibility Of The Task

In the past, many have argued that the statewide need figures should be reduced because the current estimates of the need never can be satisfied in light of (1) the maximum number of units that have been built in any given year over the last 20 years and (2) the typical need to permit the builder to construct four market units in order to produce one lower income unit. Therefore, the argument is made that the need estimates should be reduced to numbers that realistically are achievable.

However enticing this argument may be, it fails to distinguish fair share issues from compliance issues. The former deals with the magnitude of the obligation of the subject municipality while the latter deals with how and when to satisfy that obligation.*

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* The Supreme Court would appear to have required that the process of identifying the obligation be an idealistic process. Mount Laurel II at 352. That is, if every municipality in the

(continued on next page)

No one pretends that the ideal can be reached. However, by pretending that the need is less than what it actually is, we have defeated ourselves before we have even begun.

B. Allocation Factors

Whereas the above discussion focused on the necessity of recognizing the scope of the need for lower income housing statewide, the discussion below will focus on the factors utilized to distribute the regional need. Accurately identifying the statewide need is of critical importance if the lower income housing needs of this state are ever to be fairly and fully addressed. The allocation factors are less important to ensuring that the needs of the poor are fully satisfied. However, the factors are very important to ensuring that there are equities between and among municipalities.

The Issue Papers discuss two factors: (1) median income and (2) growth area.

(continued from previous page)

state were to satisfy its constitutional obligation, almost all of the present and prospective need for lower income housing would be wholly eliminated within a six year period. The only reason why all of the need would not be satisfied under the above described circumstances is because the Court does permit phasing under extreme circumstances. Mount Laurel II at 218-19. However, this is the only basis which the Supreme Court expressly sanctioned to reduce a municipality's obligation.

1. Median Income

The Issue Papers at 11 raise a frequent criticism of the median income factor utilized in the AMG formula -- that, unlike the other allocation factors, the factor is not a "true percentage" -- i.e., all the median income percentages for each municipality in the region cannot be added together to derive a number of 100%.

Neither the Court nor any of the participants in the Consensus group ever intended for the median income factor to be a "true percentage." Rather, the median income factor was intended to "modify" the fair share number that would otherwise be produced by utilizing other factors.*

The entire premise of the AMG opinion was -- let the refinement process begin. Doctor Burchell has apparently proposed a wealth factor that would constitute a true percentage and that would not suffer from the "mathematical impurities" of the AMG median income factor. The true percentage would be derived by dividing the "aggregate municipal income" by the

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* An income factor should properly reflect to some degree the extent to which a municipality has been exclusionary. In addition, it probably is indicative of the capacity of a given municipality to absorb the costs incident to satisfying the constitutional obligation.

"aggregate regional income." The aggregate municipal income is defined as

> "mean household income in municipality x number of households in municipality."

Were such a formula to be used, exclusionary municipalities would be rewarded for their past exclusionary practices. This is contrary not only to the admonition of the Supreme Court in Mount Laurel II, but also to a basic sense of fair play. Id. at 256.

To illustrate, assume the existence of two municipalities that are identical in all respects except as follows. In Municipality A, the mean household income is $100,000.00 per year and there are only 100 families. In Municipality B, the median income is $10,000.00 per year but there are 1,000 families. Assuming Municipality A and B are within the same region, thereby rendering the regional aggregate income figure identical for purposes of deriving the true income percentage, the municipalities would have the same obligation as a result of the application of this pure income factor because $100,000 per year x 100 = $10,000 per year x 1,000. Thus, although Municipality A is extremely exclusionary, as evidenced by the magnitude of the median income and the small number of households residing therein, Municipality A would be treated iden-

tical to Municipality B which has evidently been far more receptive to the needs of lower income households.

It would thus appear that the above suggested alternative is not desirable.

2. Growth Area

As noted at 12 in the Issue Papers, AMG also distributed the regional needs through a percentage created by dividing the growth area acres in the municipality by the growth area acres in the appropriate region. Use of this factor has been criticized since much of the area designated growth area is already fully developed and thus provides no opportunity for lower income housing.

The State Planning Commission will be preparing a "State Development and Redevelopment Plan" no later than July 2, 1987 to replace the SDGP. State Planning Act, Sections 1.c. and 4. The redevelopment plan will also contain a growth area classification. State Planning Act, Section 5.d. However, the objectives of the Commission in fashioning the redevelopment plan will be very different than the objectives of the Department of Community Affairs (DCA) in fashioning the SDGP. Whereas the DCA was primarily concerned with advising the state as to where the state should invest in infrastructure, the Commission will be substantially more concerned with housing

objectives. Compare SDGP at ii with State Planning Act at 5f. Since the redevelopment plan will be much more tailored to address Mount Laurel concerns than the SDGP, it is anticipated that the Commission will be able to utilize the growth area classification to measure vacant developable land, and to distinguish between growth area acreage in rural, suburban and urban areas.

In making these recommendations, it is realized that the Council has no control over the Commission. Nonetheless, to the extent the State Planning Act (1) is companion legislation to the Fair Housing Act and (2) is designed to help implement the Fair Housing Act, the Commission should be sensitive to any needs expressed by the Council.

C. Post Allocation Adjustments

Just as the trial courts have taken a number of steps after applying traditional fair share analysis to further adjust the obligation imposed on a municipality, the Council will be asked to adjust the fair share of various municipalities for a variety of reasons. Fair Housing Act, Section 7.c.(2). Rather than specifically commenting on any of the individual bases for reducing the obligation, it is strongly recommended that the Council not lose sight of the overall objectives. On one hand, there is the need to accommodate

legitimate municipal and state planning concerns. On the other hand, there is a need to make sure that the constitutional obligation will not be substantially diluted as a result of erroneously applying the Fair Housing Act standards. Any interpretation of the Council with respect to these factors should seek to strike a proper balance.

D. Phasing

Two particular problems with comments in the Issue Papers concerning phasing are significant. First, the Issue Papers indicate that the Council should "modify the legislative phasing schedules on a rare basis." Issues Paper at 38. Second, the Issue Papers suggest that the Council should look favorably on a phasing mechanism that depends upon the "capacity assessment" of any given municipality. Id.

1. The Legislative Phasing Schedules

The Issue Papers indicates that the Council should adhere to the legislative phasing schedule to the fullest extent possible unless, in the Council's judgment, variance from the schedule would better serve public health, safety and welfare. Such an interpretation would ultimately lead to an automatic dilution of the constitutional obligation in any municipality with an obligation of over 500 units. Indeed, a municipality with a fair share of 2,000 units would have its

obligation diluted by over 66 2/3% since such a municipality would have a 20 year phasing period. Fair Housing Act, Section 23.e.

It is critical to recognize that the obligation is an obligation defined in terms of a six year period. Therefore, if the Council allows a municipality twelve years to satisfy a six year obligation, the Council has thereby diluted the constitutional obligation by 50%. Certainly, there may be circumstances where legitimate planning concerns justify a twelve year phasing period. However, it is inappropriate to automatically dilute the obligation by 50% simply because of the size of the number. The Council should not assume that the satisfaction of the full obligation in a six year period would radically transform the community -- especially in municipalities that have the infrastructure and that have planned to grow rapidly as revealed by their master plans. Moreover, such an assumption would seem inconsistent with the express mandate of the Supreme Court to phase sparingly. Mount Laurel II at 219.

2. Capacity Assessment

With respect to the Issue Papers' emphasis on "capacity assessment" as a basis for a phasing standard, it is important to note that not only has this concept been discussed by Philip Caton in his master's report in the Cranbury deci-

sion, but also by the trial court in Allan-Dean v. Bedminister, 205 N.J. Super. 87, 107-112 (Law Div. May 1, 1985). Both agreed that the

> "capacity of the municipality to absorb [an extreme change in existing conditions] within a specified planning period"

is extremely important to interpreting the concept of radical transformation in the Mount Laurel II decision. Allan-Dean at 111.

Despite the emphasis on capacity assessment in the Allan-Dean decision and the Caton report, a municipality should not be able to automatically reduce its obligation from whatever fair share has been assigned to whatever capacity exists as of the date of the litigation or the request for substantive certification as the case may be. Otherwise, municipalities which have reinforced exclusionary land-use practices through the deliberate failure to develop infrastructure will be hiding behind such exclusionary practices. It is urged that this Council require those municipalities claiming a lack of infrastructure be required to develop the needed capacity.

The difficult question is how much should the municipality be expected to invest in infrastructure development? As

to this question, if adequate infrastructure cannot be developed through the funding sources provided by the Act and if the Mount Laurel developers cannot afford to pay their own way, perhaps a municipality's obligation might be adjusted to soften the burden the municipality must shoulder to provide infrastructure.

When assessing a municipality's capacity, it is urged that the Council examine not only infrastructure in place, but also infrastructure capable of being developed during the compliance period.

II. COMPLIANCE ISSUES

A. The Place Of The Builder's Remedy

This Council will inevitably have to come to grips with a very difficult issue -- the place of the builder's remedy in the administrative scheme of the Fair Housing Act. Specifically, this issue will arise when the plaintiff/transferee has a suitable site for a Mount Laurel rezoning; and when that plaintiff/transferee has played a substantial role in bringing the pressure on the municipality to comply with its constitutional obligation.

This fact pattern creates a dilemma.

If the Council confers no special status upon the plaintiff/transferee, the Council will have sacrificed an

important asset to the cause of lower income housing -- a builder ready, willing and able to produce such housing. In addition, by not showing any special treatment for the plaintiff/transferee, the Council would perhaps be showing more deference to municipal home rule than is warranted. After all, it is the abuse of home rule by the maintenance of exclusionary land use regulations that gave rise to the lawsuit in the first place.

Thus, the question may be articulated as follows: how much deference should the Council give to the municipality's home rule.

Rather than completely deferring or completely refusing to defer, a balancing approach is recommended. On one hand, ready, willing and able builders should not be discouraged from pursuing projects that will contain a substantial amount of lower income housing. On the other hand, municipalities should comply with the constitutional obligation to the fullest extent possible through the maximum exercise of their home rule powers.

Perhaps the balance can be struck by conditioning substantive certification upon the rezoning of the site in question, but allowing the municipality to satisfy the balance of its obligation in whatever fashion the municipality

chooses.* This would prevent the municipality from thwarting the attempts of legitimate builders with legitimate projects from participating in the administrative process. Furthermore, this would diminish the "manifest injustice" caused by the transfer -- a result which both the Governor and Legislature sought to avoid. Fair Housing Act, Section 16a.

The Council should also consider conditioning substantive certification on the award of site specific relief to those landowners who (1) object to the housing element and (2) demonstrate the housing element's shortcomings, providing that the objector's site is suitable for the proposed Mount Laurel project. This would prevent municipalities from standing in the way of builders willing to develop Mount Laurel housing projects on suitable land. This would keep the building community active in the administrative procedures.

B. The Economic Realties Of A Mount Laurel Project

Even if the Council decides not to award site specific relief to the plaintiff/transferee or objector, the Council will inevitably face situations in which the municipality seeks

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* Naturally, pursuant to Mount Laurel II at 279-80, the Council should not require a rezoning of the subject parcel if the municipality demonstrates that the site is clearly contrary to sound planning principles.

to satisfy some portion of its obligation through mandatory set asides. Fair Housing Act, Section 11a. In evaluating whether a mandatory set aside creates a realistic opportunity for the number of units promised, it is suggested that the Council must be satisfied that at least three conditions are met:

(1) The site must be suitable for the type of project that would be constructed pursuant to the rezoning.

(2) The project must be economically feasible - i.e. through the rezoning, the owner must have adequate economic incentive to develop the land pursuant to the rezoning.

(3) There must be no intangible factors factors that interfere with the development of the project.

See generally Allan-Deane v. Bedminster, supra at 112-117.

As demonstrated by the Issue Papers, this Council is well aware of the complexities of assessing the suitability of a site for a Mount Laurel rezoning.

As to intangible factors, the Council should use its own best judgment rather than rely on any rigid formula. It would perhaps be ill advised for the Council to accept as part of a compliance package the rezoning of a site wherein the landowner has expressed an unwillingness to develop the site for

Mount Laurel. Indeed, as a practical matter, the Council might be well advised to withhold substantive certification until it has received confirmation from each of the owners rezoned for Mount Laurel that each owner has an interest and an ability to develop the site pursuant to the rezoning. Although requiring such confirmation is entirely reasonable, it may be asking too much for the municipality to demonstrate to the Council that the land is not encumbered with title problems. Even then, the Council should retain jurisdiction. By retaining jurisdiction, if title problems are discovered or if the land is not developed for Mount Laurel purposes for any other reason, the Council would have the ability either to require the municipality (1) to rezone alternative sites or (2) to modify the zoning so as to create adequate incentives to develop the land for Mount Laurel purposes.

Finally, the economic feasibility factor is a much more difficult factor to assess.

Generally, the profitability of any Mount Laurel project depends on the cost of providing the lower income units subtracted from the increased value of the land as a result of increased densities and the elimination of cost-generating restrictions from the municipality's land use regulations.

More specifically, the following questions will enable the Council to evaluate the economic feasibility of building pursuant to a Mount Laurel rezoning.

On the negative side of the ledger, the Council should examine:

(1) What percentage of units has the municipality required the builder to set aside for lower income households? Of the lower income units, how many units has the municipality required the builder to set aside for low, rather than moderate income households?

(2) To what extent has the municipality required the builder to integrate the lower income units throughout the project and how will this impact upon the sales prices of the market units?

(3) How great a range of lower income households has the municipality required the builder to accommodate?

(4) In addition, the Council should consider standard questions concerning the anticipated cost of participation in the Act's administrative procedures, land acquisition costs, carrying costs, and the trend in the marketplace regarding interest rates.

On the positive side of the ledger, the Council should examine:

(1) As compared to the prior zoning, how many more market units can the builder construct on his land as a result of the rezoning and how much profit will these market units generate?

(2) How much will the builder save as a result of the municipality's removal of excessive restrictions and exactions in its land use regulations?

(3) How much will the builder save as a result of municipal subsidies in the form of reduced land use application fees or in the form of assistance for infrastructure? In addition, any subsidies the builder might obtain through the Fair Housing Act should be considered.

The Council should be able to balance items on both the positive and negative side of the ledger with great sophistication so as to ensure that the builder has an adequate economic incentive to build pursuant to the Mount Laurel rezoning.

C. Variation On The Builder's Remedy Theme

Just as the Supreme Court encouraged the trial courts to be innovative when developing compliance techniques, the Governor and Legislature encouraged the Affordable Housing Council to be innovative in developing alternative compliance mechanisms. Compare Mount Laurel II at 265-66 with Fair

Housing Act, Section 11.a. The Council is encouraged to recognize that a number of variations on the basic builder's remedy theme can be employed to achieve the desired result -- the actual construction of lower income housing in a fashion that makes planning sense.

By accepting variations of the basic builder's remedy theme, the Council can encourage that which it desires most. For example, if the Council wishes to create a source of funding to enable the municipality to rehabilitate substandard units or to develop sites for lower income housing itself in the form of new construction, the Council could permit landowners to contribute money to the municipality in lieu of providing a 20 percent set aside. Similarly, if the Council wishes to diminish the four-to-one problem, the central problem in compliance, the Council could encourage the municipalities to give the builders some other economic benefit, such as commercial zoning, in lieu of permitting the builder to build four market units for each lower income unit. The point is that the Council can encourage whatever activity it desires as long as a proper balance is struck between items on the positive and negative side of the ledger. Supra. at 22-23.

D. The Regional Contribution Agreement

The threshhold question the Council must face con-

cerning contribution agreements is whether the receiving municipality is excused from satisfying its obligation by virtue of having entered into the regional contribution agreement.

If the receiving municipality must satisfy its own obligation in addition to the sending municipality's, the receiving municipality will be voluntarily satisfying more than its fair share. In light of the political realities of Mount Laurel housing, it is unrealistic to expect a municipality to voluntarily satisfy more than its fair share. Municipal officials who encourage municipalities to become receiving municipalities under these circumstances would be committing political suicide.

If, however, the receiving municipality is excused from satisfying its own obligation just because it took on the responsibility of a sending municipality, an anomalous situation is created. The receiving municipality should not be permitted to subject itself to the jurisdiction of the Council merely for the purpose of receiving another municipality's obligation, but not for the purpose of addressing its own constitutional obligation. To the extent that satisfaction of the regional need depends upon the receiving municipality satisfying its own obligation in addition to that of the sending municipality's, the regional need would automatically

be lost to the extent the receiving municipality ignored its own obligation. Moreover, in the interest of comprehensive planning, which is at the root of the Fair Housing Act and the State Planning Act, the receiving municipality should plan in one comprehensive process for the satisfaction of its own obligation and the sending municipality's obligation. The planning process should not proceed in a piecemeal fashion.

In the process of identifying a receiving municipality's obligation, the Council may wish to employ a concept introduced in the AMG opinion whereby selected urban aid municipalities were (1) excused from satisfying any regional obligation and (2) required only to satisfy that portion of their indigenous obligation that was represented by their "fair share cap." AMG at 62.

In the event that this Council decides to single out certain municipalities for treatment as "selected urban aid municipalities," however, it is recommended that the Council not consider data from these selected municipalities when computing the regional figures used to derive each allocation factor. For example, were a growth area factor to be used, that factor presumably would be created by dividing growth area acres in the municipality by growth area acres in the region. The recommendation is that, when computing the growth area

acres in the region, any growth area acreage from a municipality singled out for special treatment not be included in the regional count of growth area.

Allocation of the regional need is essentially a question of how to equitably "cut up the pie" among all those growth area municipalities which have a regional obligation. The pie is, of course, the regional need. Therefore, the central inquiry is - how does each municipality with a regional obligation compare to every other municipality with a regional obligation. Given the narrowness of this inquiry, the statistics from municipalities selected to be free from a regional obligation, like the statistics from nongrowth municipalities, would serve only to cloud the comparison of each growth area municipality's regional obligation with respect to each other growth area municipality's regional obligation. To keep the comparison pure, therefore, the statistics from specially treated municipalities should be eliminated from the regional counts when allocating the regional need.

Hopefully, the above comments and suggestions will provide some assistance to the Council in the challenges that

lie ahead.

Respectfully submitted,

GREENBAUM, ROWE, SMITH, RAVIN,
DAVIS & BERGSTEIN
Attorneys for New Brunswick-
Hampton, Inc. and Rakeco Developers,
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By:_____
Jeffrey R. Surenian

DATED: February 20, 1986